

This letter concerns sales for resale. See 86 Ill. Adm. Code Sections 130.1401 and 130.1405. (This is a GIL.)

June 9, 2005

Dear Xxxxx:

This letter is in response to your letter dated November 15, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

On October 22, 2004, I received a request for a sales tax refund from our customer, ABC (customer) of CITY, IL. The customer's request is made as a result of a recent sales tax audit of ABC by an auditor representing the State of Illinois.

The customer was audited and has requested sales tax monies invoiced by XYZ (vendor) be refunded based on the advice of the Illinois state auditor.

I have forwarded a copy of various documents relating to the customer's claim:

- 1.) The customer had supplied the vendor with a State of Illinois Certificate of Resale (**4/9/2002**). The certificate claims tax exemption on 'tire patches, bead sealer, hp valves, bead sealer, cleaner fluid'. PERSON certified that 50% of the items purchased from the vendor was for resale.
- 2.) The customer has supplied the vendor with a State of Illinois Certificate of Resale (**10/02/2004**) for two of the customer's operating locations. The certificates do not include any type of product in the property description section (step 3). However, a separate attachment indicates the customer is claiming exemption on 16 groups of the vendor's product line.

Some product groups are bead sealer, tire cement, tire repair sealer, and tire sealant. Other groups are buffer fluid, hand tool, lubricants, solvent, and other

tools. Additional groups are tire patches, tire valve stems, tire valve cores, other tire hardware, and wheel weights.

The customer has certified they are claiming exemption from tax on the product groups because the product is for resale.

- 3.) A copy of each invoice to the customer from May 2, 2001 thru and including September 24, 2004.
- 4.) A detailed list of each invoice with a brief description of the types of items for each invoice and the corresponding product and tax amounts. The list includes tools and equipment items in addition to tire repair supplies. The total tax amount is \$1,461.51.

In April 2002, the vendor established exception tables based on the exemption certificate provided by the customer. The customer did not receive tax exemption on any product (e.g., tire patches, tire cement, tire cleaner fluid) unless it was included on the face of the 2002 certificate. In addition, the vendor did not exempt an item unless it was permitted within the sales and use tax laws of the State of Illinois for the customer's 'normal course of business'.

The vendor has not changed the exception tables for the customer based upon receipt of the October 2004 certificate. The customer has indicated they should not be taxed on additional groups of product and is claiming a resale exemption on every marked product group shown on the addendum page. Based on review of the State of Illinois regulations, the vendor does not agree with the customer's expanded exemption claim. Some examples are tools, oils and lubricants used on tools, and tire cleaner fluid. Additional items include tire bead sealer and tire cement.

The vendor has been contacted by sales and use tax auditors of various states and the vendor has provided a copy of requested customer exemption certificates to state auditors. The vendor feels it was inappropriate for the State of Illinois auditor to advise the customer without contacting the vendor for a copy of any exemption certificate within the vendor's files. The auditor's actions has created a problem between the customer and vendor even though the vendor was following generally established guidelines of state taxing authorities (e.g., exempting product groups included on exemption certificate on file with products listed vs unlisted items).

At this time, I respectfully request a written reply on the following issues:

- 1.) What types of products should not have included tax, based on the 4/9/2002 exemption certificate received from the customer?
- 2.) What types of products should not include tax, based on the 10/02/2004 exemption certificate? Please see item #6 below when replying to this question.
- 3.) What specific types of items on the enclosed invoice list does the state consider to be exempt from tax for the customer's 'normal course of business'? Please note, the vendor will use this answer when dealing with State of Illinois customers of a similar business nature claiming exemption from tax.

- 4.) Due to the customer's recent audit, should the vendor refund any monies directly to the customer or can the customer apply to the state for a refund?
- 5.) Due to the customer's recent audit and the statute of limitations, how far back should the refund apply if monies are to be refunded to the customer? Should it include everything from May 2001, the date the vendor received the request for refund (Oct 22, 2004), the state's receipt of this correspondence, the state's answer to the correspondence, or a later date?
- 6.) Would the State of Illinois accept the vendor's detail page of product groups as an attachment to a state issued exemption certificate? Or, would the state consider the attachment as a separate document to be used strictly for the vendor's internal records and not part of a customer's claim of exemption? Please note, the vendor will use this answer when dealing with all State of Illinois customers claiming exemption from tax.

Thank you in advance to your attention to this request of refund. Please feel free to contact me for additional information.

#### **DEPARTMENT'S RESPONSE:**

Rather than address each question, we will address the issues raised by your letter. Your letter raises two issues. One concerns the requirements for a seller when accepting a certificate that a purchase is exempt from sales tax as a sale for resale (Certificate of Resale). The other issue concerns the statute of limitations for filing claims for credit for sales tax paid in error to the Department of Revenue.

##### **I. Sale for resale.**

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3<sup>rd</sup> Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item himself or herself (i.e., it was not purchased for resale), the Department will proceed against the purchaser, not the retailer, provided the above stated conditions are met. The retailer's obligation with respect to Certificates of Resale is found at 86 Ill. Admin. Code 130.1401 and 130.1405 (enclosed). The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Tax registration inquiry" box.

While a seller will meet his or her obligation when accepting a Certificate of Resale that meets the requirements stated above, a seller may refuse to accept a Certificate of Resale if the item being purchased is clearly not for resale. Sales of items to a purchaser that do not physically enter into, nor, as ingredients or constituents, form a part of, the product sold by the purchaser are purchased for use or consumption and not for resale within the meaning of the Retailers' Occupation Tax Act. (See 86 Ill. Admin. Code 130.215 enclosed.)

If a purchaser has a question about what may be validly claimed as exempt under a Certificate of Resale, the purchaser should consult the Department's administrative rules cited above or submit a written request for information to the Department.

Some items that are not eligible for the resale exemption may still be exempt from sales tax because of the nature of the business the purchaser is engaged in. For example, a manufacturer may make a sales-tax-exempt purchase of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease (Manufacturing Machinery and Equipment Exemption). See 86 Ill. Admin. Code 130.330 (enclosed). Specifically, subdivision (d)(3)(G) of that rule states that items exempt as manufacturing machinery and equipment include “(G) The use of machinery or equipment such as buffers, builders, or vulcanizing equipment to retread tires, whether or not the tire casing is provided by the purchaser.” To obtain this exemption “[t]he user of such machinery or equipment and tools shall prepare a certificate of exemption for *each* transaction stating facts establishing the exemption for *that* transaction and submit the certificate to the retailer.” (See subsection (g) of the rule). A copy of the Department’s Equipment Exemption Certificate (enclosed) may be found on the Department’s website. Click on “Forms”, then “Sales and Use”, then “ST-587”. In lieu of the Department’s form, the purchaser may provide a valid registration or resale number and indicate in writing that the item purchased is being used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease.

## II. Claims for credit.

We are enclosing a copy of 86 Ill. Adm. Code 130.1501 concerning Claims for Credit. Claims for credit and refunds are available when a taxpayer shows that he paid tax to the Department as a result of a mistake of fact or law. If a retailer collects and remits to the Department tax on an item that should have been exempt as a sale for resale or under some other exemption, the retailer may file a claim for credit. This is true even if a valid Certificate of Resale or other exemption certificate is provided for items after the initial purchase and after tax has been paid.

Only the remitter of the tax erroneously paid to the Department is authorized to obtain a credit. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. The Department cannot approve any claim for credit unless the claimant clearly establishes that he or she has unconditionally repaid the amount of the tax to the person from whom he has collected the tax. Claims for credit must state the requirements that are contained in subpart (b) of the Department’s administrative rule.

Please note that the Department has no authority to compel the retailer to file a claim for credit. Whether or not the retailer files a claim for credit with the Department is a private business matter.

The language of the administrative rule concerning the statute of limitations is somewhat confusing but, basically, it means that the statute of limitations is 3 to 3 1/2 years and it expires in six-month blocks. See 86 Ill. Admin. Code 130.1501(a)(4). Currently, claims may be filed to recover taxes which were erroneously paid on or after January 1, 2002. However, on July 1, 2005, the statute will expire for the first six months of 2002. On July 1, 2005, claims may be filed to recover taxes which were erroneously paid on and after July 1, 2002. In the context of your situation, any claim to recover taxes which were erroneously paid during the first six months of 2002 must be filed on or before June 30, 2005.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department’s Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore  
Associate Counsel

SJM:msk  
Enc.